

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AARON WILLIAMS,

Plaintiff,

v.

PILLPACK LLC,

Defendant.

C19-5282 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant's motion to seal certain documents, docket no. 57, is GRANTED. The following documents shall remain under seal: (i) the redacted portion of Defendant's Response to the Motion to Certify Class, *see* docket no. 60; (ii) Exhibit 15 to the Declaration of Sara Fairchild, *see* docket no. 61; (iii) Exhibit B to the Declaration of Craig Davis, *see* docket no. 65; and (iv) the redacted portions of the Declaration of Mason Reid and Exhibit A attached thereto, *see* docket no. 68.

(2) Plaintiff's motion to file certain documents and to unseal certain documents, docket no. 99, is GRANTED in part and DENIED in part. The following documents shall remain under seal: (i) the unredacted version of Plaintiff's Response to the Motion for Summary Judgment, docket no. 101; (ii) the unredacted versions of Exhibit 7 (docket no. 102), Exhibit 8 (docket no. 103), and Exhibit 12 (docket no. 104); and (iii) the unredacted version of the contract between Defendant and Performance Media ("Contract"), docket nos. 37-13 and 37-15. *See* Order (docket no. 56). After redacting any payment terms referenced in the Contracts and other confidential information described in Defendant's response to this motion, *see* docket no. 106, Plaintiff may refile in open court (i) a redacted version of Plaintiff's Response to the Motion for Summary Judgment; (ii) a redacted Contract, *see* docket no. 37-13; and (iii) a

1 redacted draft Contract, *see* docket no. 37-15. All redactions must comply with the  
 2 limitations described in Defendant’s response, docket no. 106.

3 (3) Defendant’s Motion for Summary Judgment, docket no. 82, is DENIED.  
 4 There are genuine issues of fact material to whether Defendant may be held liable for  
 5 violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §§ 227(b)(1),  
 6 227(c). *See* Fed. R. Civ. P. 56(a). Defendant does not challenge the sufficiency of  
 7 evidence demonstrating that the calls made to Plaintiff violated the TCPA.<sup>1</sup> Rather,  
 8 Defendant argues that it cannot be held liable for those calls, which were made by a third  
 9 party. Although Defendant did not directly place the unlawful calls, as Plaintiff  
 10 concedes, the Court concludes that Plaintiff’s evidence raises genuine disputes of fact on  
 11 whether Defendant gave actual authorization, express or implied, to Performance Media  
 12 to allow a third party to make unlawful calls on Defendant’s behalf. *See Jones v. Royal*  
 13 *Admin. Servs., Inc.*, 887 F.3d 443, 449 (9th Cir. 2018) (“Actual authority is limited to  
 14 actions ‘specifically mentioned to be done in a written or oral communication’ or  
 15 ‘consistent with’ a principal’s general statement of what the agent is supposed to do.”).  
 16 Specifically, Plaintiff submitted declaration and deposition testimony of Christina  
 17 Anderson, who introduced Defendant to Performance Media, its purported agent  
 18 (“Agent”),<sup>2</sup> resulting in the Agent running a telephone marketing campaign for  
 19 Defendant. Anderson Decl. at ¶¶ 4–5, 8 (docket no. 34). Anderson testified that she  
 20 “was on several telephone calls with” one of Defendant’s employees and the Agent; and  
 21 during those calls, the Agent notified Defendant’s employee that the telemarketing  
 22 campaign “would be placed using a prerecorded voice system” (i.e., an “avatar” or an  
 23 “interactive voice response”) and that a third party “would be placing the calls.” *Id.* at  
 ¶ 7. Anderson further testified that on one of those calls, the Agent even introduced  
 Defendant’s employee to the third party. Anderson Dep. (docket no. 98-4 at 16–18).

Anderson’s testimony is also sufficient to raise genuine disputes of fact material to  
 whether Defendant “ratified” the third party’s unlawful calls, particularly whether  
 Defendant had actual knowledge of the third party’s placement of calls using a  
 prerecorded voice system. *Kristensen v. Credit Payment Servs., Inc.*, 879 F.3d 1010,  
 1014–15 (9th Cir. 2018). At minimum, Anderson’s testimony creates factual disputes  
 about whether Defendant had “knowledge of facts that would have led a reasonable  
 person to investigate further,” including whether Plaintiff and the other called parties

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<sup>1</sup> The Court assumes for the purposes of this motion that the calls at issue violated the TCPA.

<sup>2</sup> Although Defendant disputes that the third party was its agent, it does not appear to dispute that  
 Performance Media was its Agent, with which it contracted to execute the telemarketing campaign, despite  
 Contract language to the contrary. *See* Motion for Summary Judgment (docket no. 82 at 8, 18, 25). The  
 Court therefore assumes for purposes of this motion that Performance Media was Defendant’s Agent.

1 expressly consented to being called using a prerecorded voice system. *Id.*; *see* 47 U.S.C.  
2 § 227(b)(1)(A).

3 Defendant denies any knowledge of the third party, pointing to its employee's  
4 declaration testimony that he "never understood" that the Agent "operat[ed] a separate  
5 entity" or that the third party "would be placing the calls." Reply (docket no. 105 at 6)  
6 (citing Hunt Decl. (docket no. 63)). Defendant's evidence merely creates factual disputes  
7 about who participated in those calls, what was said, and what each participant  
8 understood. Defendant also argues that the express terms of its Contract with the Agent,  
9 which required the Agent to comply with the TCPA and all applicable laws, precludes  
10 any "actual authority" theory. Motion for Summary Judgment (docket no. 82 at 18–19).  
11 Anderson's testimony, however, is sufficient to contradict the Contract's limitation on the  
12 Agent's authority. *See Jones*, 887 F.3d at 449. Triable issues of fact remain on whether  
13 Plaintiff can prevail on his TCPA claims under § 227(b)(1) and § 227(c).

14 (4) The Clerk is directed to send a copy of this Minute Order to all counsel of  
15 record.

16 Dated this 7th day of January, 2021.

17 William M. McCool  
18 Clerk

19 s/Gail Glass  
20 Deputy Clerk